

BEFORE THE FEDERAL ELECTION COMMISSION

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v.

MUR No. _____

CORRECT THE RECORD
Elizabeth Cohen, Treasurer
455 Massachusetts Avenue, NW—Suite 600
Washington, DC 20001

HILLARY FOR AMERICA
Jose H. Villareal, Treasurer
P.O. Box 5256
New York, NY 10185-5256

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that Correct the Record (I.D. C00578997), a so-called “Carey” or “hybrid” committee,¹ has made, and Hillary Rodham Clinton’s presidential campaign committee Hillary for America (I.D. C00575795) has accepted, up to \$5.95

¹ Pursuant to the stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D. D.C. 2011), political committees that provide notice to the Commission may establish one “non-contribution” bank account that accepts contributions in unlimited amounts from individuals, corporations, labor organizations and other political committees that may be used only for independent expenditures and not for expenditures coordinated with or in-kind contributions to candidates (i.e., a “super PAC” account), and also a separate bank account subject to contribution limits and source prohibitions for making contributions to federal candidates. See Press Release, Fed. Elec. Comm’n, FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, Oct. 5, 2011, <http://www.fec.gov/press20111006postcarey.shtml>.

million in in-kind contributions in the form of coordinated expenditures in violation of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.*, and Commission regulations.

2. Specifically, based on published reports, there is reason to believe that Correct the Record has made in-kind contributions to the Clinton campaign from its non-contribution account, in violation of the committee's sworn statements to the Commission that it would not make contributions to a candidate committee from its non-contribution account,² in excess of FECA's \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), in violation of FECA's prohibition on contributions to a candidate using union and corporate funds, 52 U.S.C. § 30118(a) and (b)(2), and in violation of FECA's requirement that political committees report and disclose all contributions made to candidates, 52 U.S.C. § 30104(b).
3. Additionally, based on published reports and public statements from Correct the Record officials, there is reason to believe Hillary for America accepted in-kind contributions from Correct the Record in the form of coordinated expenditures and compensation for personal services in excess of FECA's \$2,700 limit, 52 U.S.C. § 30116(a)(1); in violation of FECA's prohibition on contributions to a candidate using union and corporate funds, 52 U.S.C. § 30118(a) and (b)(2); and additionally failed to report those in-kind contributions in violation of FECA's requirement that candidates report and disclose all contributions received from political committees, 52 U.S.C. § 30104(b).

² See Correct the Record Form 1, Statement of Organization cover letter (June 2, 2015), <http://docquery.fec.gov/pdf/085/15031431085/15031431085.pdf>; see also FEC Statement on *Carey v. FEC*, *supra* note 1.

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4. By Correct the Record failing to report the in-kind contributions it made to Hillary for America, and Hillary for America failing to report the in-kind contributions received from Correct the Record, Respondents misled the public and complainant Kelley about the true sources of candidate Hillary Clinton's support, depriving the public and complainant Kelley of the facts necessary to properly evaluate candidates for federal office and to cast an informed vote.
 5. As described in more detail below, Correct the Record is a \$6 million Washington D.C.-based political committee that spends millions on opposition research, message development, surrogate training and booking, professional video production, and press outreach for the benefit of the Clinton campaign—and by its own admission, does so in full coordination with the Clinton campaign. Although Correct the Record claims it is relying on Commission regulations excepting certain Internet activities from the definition of “coordinated communications,” those rules are simply irrelevant; the vast majority of Correct the Record's expenditures are not for Internet activities at all, and “coordinated communications” are only a subset of the much broader universe of “coordinated expenditures.” For example, according to Correct the Record's reports filed with the Commission, the political committee has paid \$391,000 to a political consulting firm that, according to news reports, contracted with Correct the Record to conduct “on-camera media training” for Clinton supporters;³ made an estimated \$302,454 in disbursements and obligations for video production-related expenses; and incurred \$48,333 in debt to a firm hired by Correct the Record to conduct an “aggressive surrogate

³ Phillip Rucker, *How Hillary Clinton's Campaign Fakes Grassroots Love*, N.Y. POST, July 8, 2015, <http://nypost.com/2015/07/08/how-hillary-clintons-campaign-fakes-grassroots-love/>.

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booking program . . . in support of Hillary Clinton.”⁴ In any case, the Commission’s Internet regulations were designed to allow “individual citizens . . . using the Internet to speak freely regarding candidates and elections,”⁵ not to offer campaigns a way to outsource their communications, opposition research, and press operations to a political committee and to pay for those activities using funds raised outside of FECA’s contribution limits and source prohibitions.

6. “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission shall make an investigation of such alleged violation. . . .” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a) (emphasis added).

FACTS

7. Correct the Record was reportedly created in 2013 as an “offshoot of the Democratic super PAC American Bridge,” focused on the 2016 presidential election with the mission of being a “dedicated research and rapid response communications project to prevent Republicans from denigrating potential Democratic candidates with baseless attacks, while potential Republican candidates reinvent themselves and their records without scrutiny.”⁶
8. On April 13, 2015, Hillary Rodham Clinton filed with the Commission a Form 2 Statement of Candidacy, establishing her as a federal candidate seeking the office of

⁴ Mike Allen, *June 17 Playbook*, POLITICO (June 17, 2016), <http://www.politico.com/tipsheets/playbook/2016/06/clintonites-join-dnc-sanders-loses-leverage-trump-touts-campaign-of-substance-bush-43-unlikely-savior-bday-desiree-barnes-tory-burch-newt-gingrich-matt-miller-214873>.

⁵ *Explanation and Justification for Internet Communications*, 71 Fed. Reg. 18589 (Apr. 12, 2006).

⁶ Michael Cook, *Cook: Arkansas Democrats Helping 'Correct The Record,'* TALK BUSINESS, Nov. 20, 2013, <http://talkbusiness.net/2013/11/cook-arkansas-democrats-helping-correct-record/>.

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president in the 2016 election, and designated "Hillary for America" as her principal campaign committee.⁷

9. The *Washington Post* reported on May 12, 2015 that "Correct the Record, a pro-Clinton rapid-response operation, announced it was splitting off from its parent American Bridge and will work in coordination with the Clinton campaign as a stand-alone super PAC."⁸ According to the *Post*, "Correct the Record believes it can avoid the coordination ban by relying on a 2006 Federal Election Commission regulation that declared that content posted online for free, such as blogs, is off limits from regulation."⁹ The article quotes Adrienne Watson, a spokeswoman for Correct the Record, stating: "The FEC rules specifically permit some activity—in particular, activity on an organization's website, in email, and on social media—to be legally coordinated with candidates and political parties[.]"¹⁰ Correct the Record explained to the *Post* that it is relying on an Internet exemption in the Commission's regulatory "definition of coordinated communications."¹¹
10. The *Wall Street Journal* similarly reported on May 12, 2015: "By not making independent expenditures, [Correct the Record] said there are no restrictions on its ability to coordinate with Mrs. Clinton's campaign. The group will spend money on activities

⁷ Hillary Rodham Clinton Statement of Candidacy, FEC Form 2 (filed Feb. 13, 2015), <http://docquery.fec.gov/pdf/524/15031411524/15031411524.pdf>.

⁸ Matea Gold, *How a Super PAC Plans to Coordinate Directly with Hillary Clinton's Campaign*, WASH. POST, May 12, 2015, <https://www.washingtonpost.com/news/post-politics/wp/2015/05/12/how-a-super-pac-plans-to-coordinate-directly-with-hillary-clintons-campaign/>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

that can legally be coordinated with a campaign, such as social media, the [Correct the Record] spokeswoman said.”¹²

11. Likewise, on May 12, 2015, the *New York Times* reported: “Correct the Record, a group started by David Brock, a staunch ally of Hillary Rodham Clinton, is recreating itself as a stand-alone ‘super PAC’ that has the ability to coordinate with her campaign” and “its sole mission is helping Mrs. Clinton.”¹³ According to the *New York Times* article, “Correct the Record will be able to communicate with federal campaigns and party committees, as it is not involved with independent expenditures.”¹⁴ In a statement, Brock told the *New York Times* that “Going forward, Correct the Record will work in support of Hillary Clinton’s candidacy for president, aggressively responding to false attacks and misstatements of the secretary’s exemplary record.”¹⁵
12. Correct the Record published a statement on the organization’s website on May 12, 2015, claiming: “Correct The Record, though a SuperPac, will not be engaged in paid media and thus will be allowed to coordinate with campaigns and Party Committees.”¹⁶ And the “About” page on Correct the Record’s website states: “Correct The Record is a strategic

¹² Rebecca Ballhaus, *Pro Clinton Group Sets Novel Strategy*, WALL ST. J., May 12, 2015, <http://blogs.wsj.com/washwire/2015/05/12/pro-hillary-clinton-group-sets-novel-strategy-to-back-presidential-hopeful/>.

¹³ Maggie Haberman, *Hillary Clinton-Aligned Group Gets Closer to Her Campaign*, N.Y. TIMES, May 12, 2015, <http://www.nytimes.com/politics/first-draft/2015/05/12/hillary-clinton-aligned-group-gets-closer-to-her-campaign/?ref=politics&r=0>; see also Adam Wollner, *Correct the Record to Coordinate with Clinton Campaign*, THE HOTLINE, May 13, 2015, 2015 WLNR 14052702.

¹⁴ Haberman, *supra* note 13.

¹⁵ *Id.*

¹⁶ Press Release, Correct the Record, Correct The Record Launches as New Pro-Clinton SuperPAC (May 12, 2015), <http://correctrecord.org/correct-the-record-launches-as-new-pro-clinton-superpac/>.

research and rapid response team designed to defend Hillary Clinton from baseless attacks.”¹⁷

13. On June 5, 2015, Correct the Record’s treasurer, Elizabeth Cohen, filed with the Commission a Form 1 Statement of Organization that stated in a cover letter:

Consistent with the stipulated judgment in *Carey v. FEC*, this committee intends to establish a separate bank account to deposit and withdraw funds raised in unlimited amounts from individuals, corporations, labor organizations, and/or other political committees. The funds maintained in this separate account will not be used to make contributions, whether direct, in-kind, or via coordinated communications, or coordinated expenditures, to federal candidates or committees.¹⁸

14. According to a July 2015 article in the *Washington Post*, “Clinton’s campaign is working hand-in-glove with Correct the Record,” noting: “The group argues that it can coordinate directly with the campaign under a 2006 FEC rule that made content posted free online off-limits from regulation.” The article continued: “Correct the Record has more than 20 staff members and plans to disseminate much of its research on its website and through social media. Any nonpublic information of value that it shares with the Clinton staff will be purchased, according to a campaign official.”¹⁹
15. The *New York Post* reported on July 8, 2015 that Correct the Record had been conducting on-camera trainings for Clinton surrogates in order to “nurture a seemingly grass-roots echo chamber of Clinton supporters reading from the same script in communities across New Hampshire, a critical state that hosts the nation’s first presidential primary.”²⁰

The super PAC, called Correct the Record, convened similar talking-point tutorials and media-training classes in May and June in three other early voting

¹⁷ About, Correct the Record, <http://correctrecord.org/about/> (last visited Sept. 12, 2016).

¹⁸ Correct the Record Statement of Organization, FEC Form 3X (filed June 5, 2015), <http://docquery.fec.gov/pdf/085/15031431085/15031431085.pdf#navpanes=0>.

¹⁹ Matea Gold, *2016 Race’s Theme Song: Blurred Lines*, WASH. POST, July 12, 2015, 2015 WLNR 20606053.

²⁰ Rucker, *supra* note 3.

states—Iowa, South Carolina and Nevada — as well as sessions earlier this spring in California.

Presidential campaigns have for decades fed talking points to surrogates who appear on national TV or introduce candidates on the stump.

But the effort to script and train local supporters is unusually ambitious and illustrates the extent to which the Clinton campaign and its web of sanctioned, allied super PACs are leaving nothing to chance.²¹

The *Post* additionally noted:

The super PAC's on-camera media training was conducted by the Franklin Forum and led by the group's president, John Neffinger, a Democratic strategist who specializes in coaching people for television interviews. Correct the Record held a series of similar media sessions in the spring of 2014 to prepare Clinton backers for interviews surrounding her national book tour for 'Hard Choices,' the memoir from her State Department years."²²

16. A July 16, 2015 *New York Times* article further made clear that Correct the Record's activities were not limited to "internet activities." The *Times* reported that: "[a] so-called tracker with the 'super PAC' Correct the Record, which is coordinating with Mrs. Clinton's campaign, was spotted Thursday in Iowa at an immigration-related round-table held by Mr. O'Malley, the former Maryland governor and one of Mrs. Clinton's rivals for the Democratic nomination."²³

17. On July 28, 2015, MSNBC.com similarly reported that:

[Correct the Record] has begun deploying a small handful of so-called "trackers" to discreetly record the public events of her two main rival Democrats, a spokesperson confirmed to msnbc.

O'Malley's campaign has spotted Correct the Record trackers at four events in Iowa and two in New Hampshire, all since July 16. Sanders' campaign has also

²¹ *Id.*

²² *Id.*

²³ Maggie Haberman, *Tracker Linked to Hillary Clinton Is Spotted at a Martin O'Malley Event*, N.Y. TIMES, July 16, 2015, http://www.nytimes.com/politics/first-draft/2015/07/16/tracker-linked-to-hillary-clinton-pac-is-spotted-at-a-martin-omalley-event/?_r=0.

spotted trackers from the group, but did not provide a specific number or locations of the sightings.²⁴

18. On its July 31, 2015 Mid-Year Report, Correct the Record disclosed \$1,435,000 in receipts for its non-contribution account, including a \$200,000 contribution and multiple \$125,000 contributions, as well as a \$275,615 receipt from Hillary for America dated June 1, 2015, described in the memo line as "research: non-contribution account."²⁵ Correct the Record reported \$333,919 in disbursements from that "non-contribution" account during the reporting period.²⁶ Correct the Record did not report raising any funds for, or spending any funds from, its "contribution" account during the period covered by the report.
19. On September 3, 2015 Correct the Record announced it was launching a new project, the "Benghazi Research Center," to "shed light on what has become a taxpayer funded campaign of political harassment against Hillary Clinton, led by Trey Gowdy," at a new website, www.benghazicommittee.com.²⁷
20. In early September, Hillary Clinton announced her plan to "curb the outsized influence of big money in American politics" and Correct the Record "sent an email to supporters

²⁴ Alex Seitz-Wald, *Pro-Clinton Super PAC Keeps a Close Eye on Clinton Rivals*, MSNBC (July 28, 2015), <http://www.msnbc.com/msnbc/pro-clinton-super-pac-keeps-close-eye-rivals>.

²⁵ Correct the Record Report of Receipts and Disbursements, FEC Form 3x (reporting period 01/01/15 to 06/31/15),

<http://docquery.fec.gov/pdf/419/201507319000556419/201507319000556419.pdf>.

²⁶ *Id.*

²⁷ Press Release, Correct the Record, Correct the Record Unveils Benghazi Research Center (Sept. 3, 2015), <http://correctrecord.org/correct-the-record-unveils-benghazi-research-center/>.

highlighting Clinton's plan and featuring a video produced by Clinton's campaign in support of her recommendations."²⁸ An article in *International Business Times* explained:

As a result of the Supreme Court's 2010 *Citizens United* decision—which Clinton pledged Tuesday to overturn if she is elected—outside groups can accept unlimited money to influence elections, but they are supposed to be independent of the candidates they support. Correct The Record asserts that it is allowed to accept unlimited money and directly coordinate with political campaigns and political parties.²⁹

21. On September 11, 2015, website *The Blaze* reported that Correct the Record had issued a 12-page report that was distributed to reporters arguing "there is no evidence former Secretary of State Hillary Clinton's private email server was compromised."³⁰
22. On September 14, 2015, the *Huffington Post* reported that:

[Correct the Record] is going negative, circulating an email that yokes her chief rival Sen. Bernie Sanders (I-Vt.) to some of the more controversial remarks made by Jeremy Corbyn, the United Kingdom's new Labour Party leader The email, sent to a *Huffington Post* reporter in response to an article about Corbyn and Sanders without any agreement that it would be off the record, was meant to flag Corbyn's "most extreme comments."³¹

The *Huffington Post* additionally noted that Correct the Record was conducting activities that the Clinton campaign had declined to engage in publicly. "Clinton's camp has long said it has no plans to attack Sanders. . . . Clinton, in turn, almost never mentions

²⁸ Andrew Perez, *A Contradictory Campaign-Finance Reform Plan: A super PAC backing Hillary Clinton is Promoting her Plan to Overturn Citizens United and "Curb the Influence of Big Money in American Politics*, INT'L BUS. TIMES, Sept. 8, 2015, 2015 WLNR 26709393.

²⁹ *Id.*

³⁰ Fred Lucas, *Clinton Defenders now Contend Clinton's Private Email Helped Keep Information More Secure*, THE BLAZE (Sept. 11, 2015), <http://www.theblaze.com/stories/2015/09/11/clinton-defenders-now-contend-clintons-private-email-helped-keep-information-more-secure/>.

³¹ Samantha Lackman & Ryan Grim, *A Pro-Clinton Super PAC Is Going Negative on Bernie Sanders*, HUFFINGTON POST, Sept. 14, 2015, http://www.huffingtonpost.com/entry/hillary-clinton-bernie-sanders-jeremy-corbyn_us_55f73339e4b00e2cd5e79e11.

Sanders' name and has focused on her Republican rivals. Monday's Correct the Record email strays from that pattern."³²

23. The next day, on September 15, Correct the Record founder David Brock said that the email and research comparing Sanders to Corbyn "is just standard opposition research . . . you've seen it before, you'll see it again."³³
24. According to a September 2015 *Time* magazine profile of Correct the Record founder David Brock, he "works on what he calls the 'coordinated' side of the Clinton campaign."³⁴

His group, Correct the Record, raises unlimited funds outside the regulated campaign finance system. But since it does not pay for advertising advocating her election, he says he can continue under current rules to talk to her, and her campaign staff about strategy, while deploying the unregulated money he raises to advocating her election online, through the press, or through other means of non-paid communications.³⁵

25. On September 22, 2015, *Time* noted that, as Clinton announced her policy platform on health care, "Correct the Record, a super PAC supporting her campaign, released a barrage of facts detailing Republicans' stance on prescription drugs."³⁶
26. On September 28, 2015, *Fox News* noted that a senior Clinton campaign staffer, Karen Finney, and Correct the Record President Brad Woodhouse had tweeted identical

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Id.

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Jenifer Epstein, *David Brock Declines to Apologize to Bernie Sanders Over Jeremy Corbyn Comparison*, BLOOMBERG, Sept. 15, 2015, <http://www.bloomberg.com/politics/articles/2015-09-15/david-brock-declines-to-apologize-to-bernie-sanders-over-jeremy-corbyn-comparison>.

³⁴

Michael Scherer, *Hillary Clinton's Bulldog Blazes New Campaign Finance Trails*, TIME, Sept. 10, 2015, <http://time.com/4028459/david-brock-hillary-clinton-media-matters/>.

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Id.

³⁶

Sam Frizell, *Clinton, Sanders Offer Competing Visions of Health Care*, TIME, Sept. 22, 2015, <http://time.com/4043242/hillary-clinton-bernie-sanders-health-care/>.

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messages about Clinton around the same time.³⁷ Reporter James Rosen said that Woodhouse told him in an email that Correct the Record and the campaign are allowed to coordinate. "Correct the Record claims federal regulation against coordination between campaigns and Super PACs do not cover activity where no money changes hands," Rosen said. "This, Woodhouse told me, is Campaign 101."³⁸

27. An October 12, 2015 article in the *Los Angeles Times* noted that a "rapid-response group called Correct the Record broke away from a pro-Clinton super PAC and is now working directly with the campaign. A spokeswoman for the group contends an FEC loophole means that the coordination regulation doesn't apply to them because their work is posted only online."³⁹
28. In late October 2015, when Hillary Clinton testified before the House Select Committee on Benghazi, the *Associated Press* reported that "at Correct the Record, an outside group that coordinates with her campaign, a 30-person war room [stood] ready to defend Clinton during the hearing."⁴⁰ *CNN* similarly reported:

[W]e've also learned that there's going to be a war room that Correct the Record will be staffing a room of about 30 employees [*sic*] who will be doing rapid response. They're going to be firing back on things that they

³⁷ *Did the Clinton Campaign Illegally Coordinate Social Media Messages?*, FOXNEWS (Sept. 28, 2015), <http://insider.foxnews.com/2015/09/28/did-hillary-clinton-campaign-illegally-coordinate-social-media-messages>.

³⁸ *Id.*

³⁹ Joseph Tanfani and Seema Mehta, *Stretching the Political Rules: It's Getting Harder to Tell What Separates a Super PAC from a Candidate's Campaign*, L.A. TIMES, Oct. 12, 2015, <http://www.latimes.com/nation/la-na-politics-superpacs-impact-20151005-story.html>.

⁴⁰ Lisa Lerer & Ken Thomas, *Analysis: Clinton Rides Skill, Luck Into Benghazi Hearing*, ASSOCIATED PRESS, Oct. 22, 2015, <http://bigstory.ap.org/article/64f4973481994ac7b8b90947c8dd5e9e/analysis-clinton-rides-skill-luck-benghazi-hearing>.

hear during Hillary Clinton's testimony, which we do expect, as it did back in 2013, is going to last several hours.⁴¹

CNN additionally reported on October 21 that Correct the Record had distributed a 140-page "opposition research book, called 'The Complete Guide to the Benghazi Select Committee,'" to a variety of media outlets "that impugns the character of Republicans on the committee."⁴²

29. Similarly, on October 22, the *New York Times* reported:

When some of Hillary Clinton's top supporters created a "super PAC" in March to work with her presidential campaign on media responses, they promised a "rapid response" to political attacks on her from all comers.

They certainly delivered on Thursday.

The "super PAC" – Correct the Record, founded by David Brock and other staunch Clinton allies – flooded the emails of Washington reporters with a running, blow-by-blow critique of Mrs. Clinton's contentious appearance before the House Benghazi committee.

....

By the time the committee returned from lunch, Correct the Record had put out 18 news releases. And there was still an entire afternoon session left to go. By late afternoon, with testimony entering its eighth hour and Correct the Record trashing the Republicans for interrupting Mrs. Clinton so often, its press releases had slowed to a not-so-rapid pace of three or so an hour.

It had been a long day, and it seemed everyone was tired—even Mrs. Clinton's rapid-response team.⁴³

⁴¹ CNN Poll: 74% Disapprove of GOP Leadership in Congress; Biden Draws Sharp Contrast with Clinton; What is Hillary Clinton's Benghazi, CNN: NEW DAY (Oct. 21, 2015), transcript available at <http://www.cnn.com/TRANSCRIPTS/1510/21/nday.01.html>.

⁴² Briana Keller, *Super PAC Targets Benghazi Committee Republicans Ahead of Hillary Clinton's Testimony*, CNN (Oct. 21, 2015), <http://www.cnn.com/2015/10/21/politics/hillary-clinton-benghazi-committee-testimony-response/>; see also "THE COMPLETE GUIDE TO THE BENGHAZI SELECT COMMITTEE" (2015) <http://benghazicommittee.com/wp-content/uploads/2015/10/The-Complete-Guide-to-the-Benghazi-Select-Committee-FINAL.compressed.pdf>.

⁴³ Eric Lichtblau, *Clinton 'Super PAC' Responds to Benghazi Hearings With 'Research Center' and a Flurry of News Releases*, N.Y. TIMES, Oct. 22, 2015,

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30. On October 25, 2015 the *Washington Post* reported that Correct the Record would be launching a project called "Let's Talk Hillary" that, according to a memo shared with the newspaper, would feature "hundreds of interviews" with people who have known Clinton, filmed "professionally but simply, devoid of glitz or fanfare," with the goal of presenting "authentic grassroots stories presented in an authentic grassroots style."⁴⁴ The project "will be funded by and run out of Correct the Record . . . [which] works with Clinton's official campaign on communications strategy," the *Post* reported, and "was created by Allida Black, a longtime supporter who co-founded Ready for Hillary, which laid the groundwork for Clinton's presidential bid."⁴⁵ In a Correct the Record press release announcing the Let's Talk Hillary project, Black said the videos will "make you laugh and smile and they'll make you more determined than ever to ensure that Hillary becomes the next president of the United States."⁴⁶ Correct the Record created a new website for the project at <http://lthproject.org>, as well as a separate Facebook page,⁴⁷ Twitter account,⁴⁸ and YouTube account.⁴⁹

http://www.nytimes.com/politics/first-draft/2015/10/22/clinton-super-pac-responded-to-benghazi-hearings-with-research-center-and-a-flurry-of-news-releases/?_r=0.

⁴⁴ Phillip Rucker, *Super PAC Launches 'Let's Talk Hillary' to Reveal Softer Side of Clinton*, WASH. POST, Oct. 25, 2015, https://www.washingtonpost.com/politics/super-pac-launches-lets-talk-hillary-to-reveal-a-softer-side-of-clinton/2015/10/25/3ba216ae-7b3c-11e5-afce-2afd1d3eb896_story.html.

⁴⁵ *Id.*

⁴⁶ Press Release, Correct the Record, CORRECT THE RECORD ANNOUNCES MAJOR NATIONAL VIDEO CAMPAIGN FEATURING THE HILLARY CLINTON STORY YOU DON'T KNOW, TOLD BY THE PEOPLE WHO KNOW HER BEST, <http://correcttherecord.org/correct-the-record-announces-major-national-video-campaign-featuring-the-hillary-clinton-story-you-dont-know-told-by-the-people-who-know-her-best/>.

⁴⁷ See Breaking Barriers 2016, FACEBOOK, <https://www.facebook.com/LTHProject> (last visited Oct. 5, 2016).

⁴⁸ See @LTHProject, TWITTER, <https://twitter.com/lthproject> (last visited Oct. 5, 2016).

⁴⁹ See Let's Talk Hillary, YOUTUBE, <https://www.youtube.com/channel/UCjfINXEifDjU83O8rfunlsw> (last visited Oct. 5, 2016).

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31. On November 17, 2015, the *Burlington Free Press* reported that Correct the Record had commissioned the firm Public Policy Polling to conduct polling during the November 14 Democratic debate between Clinton and Sanders; the poll declared that Clinton had won the debate.⁵⁰ The poll was posted to the Public Policy Polling website and distributed to reporters.⁵¹
32. Also in November, multiple news outlets published positive stories about Clinton based on Correct the Record's "Let's Talk Hillary" video project.
- i. A *Chicago Tribune* columnist, for example, wrote a lengthy article about Chicago-focused "short videos created by political action committee Correct the Record in which people with long-running friendships and career ties with Clinton talk about knowing her to be a warm friend, trusted mentor and juggling-it-all working mom."⁵²
 - ii. *Time* published a story about "two new videos from Correct the Record, part of their series, 'Let's talk Hillary,' which seek to humanize a presidential candidate who has been in the national spotlight for well more than 20 years":

The videos mark an historic moment where Clinton championed women's issues speaking truth to power by standing up to China's one-child and dowry policies. They also serve to highlight Clinton's focus on the historic nature of her own campaign as the potential first female president. Finally,

⁵⁰ Emilie Teresa Stigliani, *Sanders camp questions poll showing Clinton won debate*, BURLINGTON FREE PRESS, Nov. 17, 2015, <http://www.burlingtonfreepress.com/story/news/politics/2015/11/15/poll-clinton-won-2nd-democratic-debate/75822694>.

⁵¹ Press Release, Public Policy Polling, Democratic Voters Overwhelmingly Think Clinton Won Debate; Particularly Strong on National Security Issues (Nov. 14, 2015), <http://www.publicpolicypolling.com/main/2015/11/democratic-voters-overwhelmingly-think-clinton-won-debate-particularly-strong-on-national-security-i.html>.

⁵² Heidi Stevens, *The Softer Side of Hillary, As Told By a Chicago Pal*, CHI. TRIB., Nov. 9, 2015, <http://www.chicagotribune.com/lifestyles/stevens/ct-hillary-clinton-videos-correct-the-record-balancing-act-heidi-stevens-20151109-column.html>.

the videos are meant to humanize a woman that friends and family say is vibrant and funny but who can also come off as aloof and out-of-touch in public.⁵³

33. In its end-of-year report for the period July 1, 2015 to December 31, 2015, Correct the Record reported \$2,001,474 in receipts for its non-contribution account.⁵⁴ This included a \$6,346 payment from Hillary for America on July 17 described as "Payment for Research Services: Non Contribution Account."⁵⁵ It also included a \$50,000 contribution from American Bridge 21st Century on November 25 and \$1,000,000 from Priorities USA Action on December 21, plus a \$50,000 contribution from the union American Federation for Teachers on December 23, and contributions from corporations such as \$20,000 from Falconwood Corporation on December 10, \$25,000 from PH Trust on December 11, and a total of \$100,000 from Fayard Law Firm LLC.⁵⁶ Correct the Record reported \$2,770,557 in disbursements from the non-contribution account during the reporting period, including a \$400,000 contribution to American Bridge 21st Century on December 31, \$265,000 in disbursements to Franklin Forum (which, according to published reports, conducted on-camera media training for Clinton surrogates), and an estimated \$152,578 in disbursements for video production-related expenses.⁵⁷ For its federal contribution account Correct the Record raised \$6,000 in itemized contributions and spent \$1,932.

⁵³ Jay Newton Small, *Inside Hillary Clinton's Beijing Speech*, TIME, Nov. 23, 2015, <http://time.com/4125236/hillary-clinton-beijing-speech-video>.

⁵⁴ Correct the Record 2015 Year-End Report, FEC Form 3x Report of Receipts and Disbursements (reporting period 07/01/15 to 12/31/15), <http://docquery.fec.gov/pdf/110/201601319004983110/201601319004983110.pdf#navpanes=0>.

⁵⁵ *Id.*

⁵⁶ *Id.* Complainants do not know whether Fayard Law Firm LLC is treated as a corporation or partnership by the Internal Revenue Service and, accordingly, how its contribution would be attributed under 11 C.F.R. 110.1(g).

⁵⁷ *Id.* Recipients of disbursements for "video production" or "video consulting" include Wild Onion, Dewey Square Group, and Allenswood Group. *Id.*

34. On January 21, 2016, the *Burlington Free Press* reported that:

[Correct the Record] has tried to 'flag' stories about Bernie Sanders, but the group does not want its name attached. Daniel Wessel, Correct the Record press secretary, contacted the *Burlington Free Press* by email and phone to offer 'off the record' story pitches ...

Wessel emailed the *Free Press* in early January to point out that Connecticut Gov. Dannel Malloy 'hit Bernie on guns today.' Wessel offered to send more information on Sanders' record if the paper was interested in the story ...

Wessel said that his organization prefers to be named only when speaking about Republican candidates. He offered to have his organization named in certain cases if the *Free Press* requested permission. The *Free Press* declined to agree to Wessel's terms.⁵⁸

35. On February 18, 2016, *Latin Post* reported that "Pro-Hillary Clinton Super PAC Correct the Record released a campaign ad Wednesday scolding Bernie Sanders on immigration reform," noting that the "48-second ad comes three days before the Democratic caucus in Nevada, one which may see as many as 194,000 Latinos turnout."⁵⁹
36. On February 22, 2016, *Politico* announced that the Clinton campaign "has hired Adrienne Watson as a rapid-response spokeswoman," who "previously served as communications director for Correct the Record, the David Brock-led super PAC that coordinates with the campaign."⁶⁰ Additionally, *Politico* noted, "Watson joins another Correct the Record

⁵⁸ Emilie Teresa Stiglani, *Clinton Super PAC Offers 'Off the Record' News Tips*, BURLINGTON FREE PRESS, Jan. 21, 2016, <http://www.burlingtonfreepress.com/story/news/politics/2016/01/21/clinton-super-pac-offers-off-record-news-tips/79131372/>.

⁵⁹ Jose Serrano, *New Super PAC Ad Attacks Bernie Sanders' Immigration Record*, LATIN POST (Feb. 18, 2016), <http://www.latinpost.com/articles/115548/20160218/new-super-pac-ad-attacks-bernie-sanders-immigration-record.htm>.

⁶⁰ Annie Karni, *Clinton Campaign Hires Rapid-Response Spokeswoman*, POLITICO (Feb. 22, 2016), <http://www.politico.com/story/2016/02/hillary-clinton-campaign-staff-growing-219638>.

alumnus, Adrienne Elrod, who now oversees Clinton's surrogate operation as director of strategic communications and surrogates."⁶¹

37. On April 7, 2016, *Reuters* reported that Correct the Record "has circulated comparisons between Sanders and divisive Republican front-runner Donald Trump . . . ahead of New York's nominating contests on April 19," including "a mash-up of television pundits criticizing Sanders' perceived missteps in [an interview with *New York Daily News*], quoting one calling it 'almost Trumpian.'"⁶²

38. In mid-April of 2016, the American Association of Political Consultants (AAPC) awarded Correct the Record a gold "Pollie" award for Most Original/Innovative Collateral Material for its "'Complete Guide to the Benghazi Select Committee,' which was released in advance of Secretary Clinton testifying before the Benghazi Select Committee."⁶³ As reported in *Politico* Playbook, the announcement stated:

The book and rapid-response efforts received extensive earned media coverage [including 30 mentions on TV], shifting the narrative of the 11-hour testimony to the content of Correct The Record's guide and, consequentially, the facts about the politically-fueled investigation.⁶⁴

AAPC's "Pollie" awards have been described as "the Oscars of political advertising."⁶⁵

Although AAPC granted dozens of 2016 Pollie awards in the "Internet/Digital" category,

⁶¹ *Id.*

⁶² *Clinton, Sanders Turn Spiky Ahead of New York Primary*, REUTERS, Apr. 7, 2015, <http://www.cnn.com/2016/04/07/clinton-sanders-turn-spikey-ahead-of-new-york-primary.html>.

⁶³ See Mike Allen, *April 18 Playbook*, POLITICO (Apr. 18, 2015), <http://www.politico.com/playbook/2016/04/18-days-to-cleveland-204-days-to-election-dems-feel-trump-pinch-firms-want-to-balance-convention-gifts-so-may-shun-both-sneak-peek-at-dnc-dccc-packages-pulitzer-spoiler-bdays-rick-kaplan-evan-ryan-213804#ixzz46Bae8SFb>.

⁶⁴ *Id.*

⁶⁵ *Pollie Awards*, American Association of Political Consultants, available at <https://theaapc.org/awards/pollie-awards/> (last visited Sept. 10, 2016).

Correct the Record did not win an "Internet/Digital" award, but instead won an award in the separate "Collateral" category.⁶⁶

39. In its 2016 first-quarter report filed April 15, 2016, Correct the Record reported \$1,647,520 in receipts for its non-contribution account during the reporting period, all raised from ten individuals or groups—including a \$500,000 contribution, a \$350,000 contribution, and several \$100,000 contributions.⁶⁷ One of those \$100,000 contributions came from the Heising-Simons Action Fund, a non-profit corporation.⁶⁸ It reported \$1,358,640 in disbursements from the non-contribution account, including \$126,000 to the speech-writing firm West Wing Writers and \$100,000 to Franklin Forum (which conducts on-camera training for Clinton surrogates) and an estimated \$87,050 in disbursements for video production-related expenses.⁶⁹ Correct the Record reported only one \$20 contribution to its contribution account and one \$50 disbursement.
40. On April 21, 2016, Correct the Record announced it was launching the "Barrier Breakers 2016 digital task force," declaring in a press release:

Correct The Record will invest more than \$1 million into Barrier Breakers 2016 activities, including the more than tripling of its digital operation to engage in online messaging both for Secretary Clinton and to push back against attackers on social media platforms like Twitter, Facebook, Reddit, and Instagram.⁷⁰

⁶⁶ See "2016 Pollie Categories," American Association of Political Consultants, https://pollies.secure-platform.com/a/page/categories_2 (last visited Sept. 10, 2016).

⁶⁷ Correct the Record April 15, 2016 Quarterly Report, FEC Form 3x Report of Receipts and Disbursements (reporting period 01/01/16 to 03/31/16), <http://docquery.fec.gov/pdf/658/201604159012556658/201604159012556658.pdf>.

⁶⁸ *Id.*

⁶⁹ *Id.* Recipients of disbursements for "video production" or "video consulting" include Wild Onion, Dewey Square Group, and Allenswood Group. *Id.*

⁷⁰ Press Release, Correct the Record, BARRIER BREAKERS 2016: A PROJECT OF CORRECT THE RECORD: TASK FORCE WILL HELP CLINTON SUPPORTERS PUSH BACK ON ONLINE HARASSMENT AND THANK

The press release noted that the task force had hired “former reporters, bloggers, public affairs specialists, [and] designers” to go after Clinton critics and had already “engaged” with at least 5,000 people. The press release continued:

Lessons learned from online engagement with ‘Bernie Bros’ during the Democratic Primary will be applied to the rest of the primary season and general election—responding quickly and forcefully to negative attacks and false narratives. Additionally, as the general election approaches, the task force will begin to push out information to Sanders supporters online, encouraging them to support Hillary Clinton.”⁷¹

The press release also stated that “Barrier Breakers 2016 is a project of Correct The Record and the brainchild of David Brock, and the task force will be overseen by President of Correct The Record Brad Woodhouse and Digital Director Benjamin Fischbein.”⁷²

41. Correct the Record also created a new Facebook page⁷³ and Twitter account⁷⁴ for the “Barrier Breakers” project.
42. On April 21, 2016, *The Daily Beast* reported on the Correct the Record “Barrier Breakers” project, noting:

Some Bernie Sanders-supporting users on Reddit already started to notice the changes on Thursday afternoon. “This explains why my inbox turned to cancer on Tuesday,” wrote user OKarizee. “Been a member of reddit for almost 4 years and never experienced anything like it. In fact, in all my years on the internet I’ve never experienced anything like it.”⁷⁵

SUPERDELEGATES (Apr. 21, 2016), <http://correctrecord.org/barrier-breakers-2016-a-project-of-correct-the-record/>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ See <https://www.facebook.com/BarrierBreakers2016/timeline>.

⁷⁴ See <https://twitter.com/nobarriers2016>.

⁷⁵ Ben Collins, *Hillary PAC Spends \$1 Million to ‘Correct’ Commenters on Reddit and Facebook*, *DAILY BEAST* (Apr. 21, 2016), <http://www.thedailybeast.com/articles/2016/04/21/hillary-pac-spends-1-million-to-correct-commenters-on-reddit-and-facebook.html>.

Correct the Record's communications director, Elizabeth Shappell, told *The Daily Beast* that "Barrier Breakers 2016 is focused on pushing out positive content to Hillary supporters online to counter negative attacks and false narratives," and "[t]he expanded task force was established in anticipation of the general election."⁷⁶

43. On May 9, Correct the Record released an ad that, according to *Politico*, seeks to "hang Trump with his own comments about women."⁷⁷

The 72-second spot released on Monday by Correct The Record, a pro-Clinton super PAC, begins with Trump remarking 'that nobody respects women more than Donald Trump' ... before transitioning to a series of disparaging comments the real estate mogul has made about women throughout his career.⁷⁸

44. Also on May 9, the *Los Angeles Times* reported on Correct the Record's "Barrier Breakers" project, writing:

Hillary Clinton's well-heeled backers have opened a new frontier in digital campaigning, one that seems to have been inspired by some of the Internet's worst instincts. Correct the Record, a super PAC coordinating with Clinton's campaign, is spending some \$1 million to find and confront social media users who post unflattering messages about the Democratic front-runner.⁷⁹

The article continued:

"It is meant to appear to be coming organically from people and their social media networks in a groundswell of activism, when in fact it is highly paid and highly tactical," said Brian Donahue, chief executive of the consulting firm Craft Media/Digital.

"That is what the Clinton campaign has always been about," he said. "It runs the risk of being exactly what their opponents accuse them of being: a campaign that

⁷⁶ *Id.*

⁷⁷ Nolan McCaskill, *Clinton Allies Hang Trump With His Own Comments About Women*, *POLITICO* (May 10, 2016), <http://www.politico.com/story/2016/05/trump-anti-women-ad-223001>.

⁷⁸ *Id.*

⁷⁹ Evan Halper, *Be Nice to Hillary Clinton Online — or Risk a Confrontation with Her Super PAC*, *L.A. TIMES*, May 9, 2016, <http://www.latimes.com/politics/la-na-clinton-digital-trolling-20160506-snap.htmlstory.html>.

appears to be populist but is a smokescreen that is paid and brought to you by lifetime political operatives and high-level consultants.”⁸⁰

45. On May 11, the *Wall Street Journal* reported that, in anticipation of a State Department Inspector General report on private email usage by previous Secretaries of State:

Correct the Record, a group run by Mrs. Clinton’s allies, preemptively moved to discredit the report last week by noting that a top official in the IG’s office formerly worked for Sen. Chuck Grassley (R., Iowa), who chairs the Senate Judiciary Committee. His panel is also probing issues related to Mrs. Clinton’s time in office.

Brad Woodhouse, president of Correct the Record, accused Sen. Grassley of embarking on a “partisan witch hunt.” A spokeswoman for Mr. Grassley called those charges “falsehoods.”⁸¹

46. On June 8, the *Washington Post* reported:

“Correct the Record, a super PAC supporting Hillary Clinton, is launching a “Trump Lies” campaign on Thursday that catalogs the business mogul’s lies and inaccuracies, dating from the start of his real estate career in the 1970s to his current campaign for president.

Thursday’s launch includes an interactive website, TrumpLies.com, which contains a searchable database of Trump’s misstatements, as well as a 40-minute video highlighting his struggles with the truth since announcing his candidacy a year ago.”⁸²

47. Similarly, on June 9, *Time* reported on the launch of Correct the Record’s “Trump Lies” campaign and noted the group held a media call announcing the launch:

“Made public on Thursday, Trump Lies is aimed at underlining the presumptive Republican nominee’s “endless falsehoods and history of fraud” using fact-checks from the Washington Post and PolitiFact.

‘People think all politicians lie,’ said Brad Woodhouse, president of Correct the Record in a phone call with media previewing the site. ‘Well, Donald Trump is of

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Id.

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Byron Tau, *Emails Are Likely to Keep Complicating Hillary Clinton's Campaign*, WALL ST. J., May 11, 2016, <http://www.wsj.com/articles/emails-are-likely-to-keep-complicating-hillary-clintons-campaign-1463001566>.

⁸²

Philip Rucker, *Pro Clinton super PAC to launch a 'Trump Lies' campaign*, WASH. POST, June 8, 2016, <https://www.washingtonpost.com/news/post-politics/wp/2016/06/08/pro-clinton-super-pac-to-launch-a-trump-lies-campaign/>.

a completely different order and it helps draw the entire picture of him being a fraud and a con man.”⁸³

48. Correct the Record also announced the “Trump Lies” campaign via a June 9 press release, which stated that the group “will track Trump’s false statements and debunk his claims on a new website, TrumpLies.com:”

From now until November, the Trump Lies Campaign will deconstruct Trump’s claim that he is a “straight-shooter” and ensure that voters are aware of Trump’s record of fraud. Every Friday, Correct The Record will release a weekly roundup highlighting Trump’s new lies, the false claims he has repeated, and the latest reports from *The Washington Post* and *Politifact* debunking his statements. And during the Republican National Convention, Correct The Record will document in real time Trump’s false claims—and hold accountable Republicans who repeat or expand upon his falsehoods.⁸⁴

49. On June 16, *Politico Playbook* reported that Correct the Record “has a year-in-review video and 366 lies they have compiled to mark one year since Donald Trump entered the race. ‘After a year of Donald Trump, would anyone really want four more?’”⁸⁵ The *Politico* post linked to the video and an extensive Correct the Record research memo posted on the “Trump Lies” website.⁸⁶
50. Also on June 16, Correct the Record Senior Adviser Jennifer Granholm appeared on CNN to discuss gun legislation in Congress. During the interview, Granholm stated, “I’ve been working with Correct the Record in support of Hillary Clinton. She has been so

83 Julissa Higgins, *Pro-Hillary Clinton Super PAC Launches Website on ‘Trump Lies’*, TIME, June 9, 2016, <http://time.com/4363520/hillary-clinton-trump-lies-correct-the-record/>.

84 Press Release, Correct the Record, Correct the Record Launches “Trump Lies” Campaign (June 9, 2016), <http://correctrecord.org/correct-the-record-launches-trump-lies-campaign/>.

85 Mike Allen, *June 16 Playbook*, POLITICO (June 16, 2016), <http://www.politico.com/tipsheets/playbook/2016/06/hillary-tv-blitz-begins-today-trump-rnc-tension-year-of-trump-announced-1-year-ago-today-rubio-might-run-for-reelection-dan-scandling-to-apco-politico-brexite-app-214844>.

86 *Id.*

clear about doing reasonable gun safety measures, things that would be no-brainers to most gun owners. Most gun owners favor this.”⁸⁷

51. On June 17, *Politico* Playbook reported:

Correct The Record has brought on QRS New Media to help oversee an aggressive surrogate booking program, connecting regional and national surrogates with radio and television news outlets across the country in support of Hillary Clinton. The QRS team previously built and ran booking operations for the Democratic National Convention and multiple presidential campaigns including Gore 2000, Kerry 2004, Clinton 2008, and Obama 2008.”⁸⁸

According to the QRS Newmedia website, the firm “specializes in scalable, multi-local earned-media campaigns. Whether you need to reach two or 200 local media markets QRS will give you the tools, technology and know-how to deliver your message where you need it most.”⁸⁹

52. On June 20, 2016, *Slate* wrote that Correct the Record’s “Barrier Breakers” project “sounds a lot like astroturfing, the practice of creating fake grass-roots support by paying influencers to advocate for your views. Allegations of online astroturfing are nothing new . . . but this is the first time that a super PAC or campaign has made use of astroturfing openly and on such a massive scale.”⁹⁰ Correct the Record Communications Director Elizabeth Shappell was quoted in the article as stating, “The investment into the Barrier

87 CNN appearance and transcript excerpted at: Brad Wilmoth, *CNN's Costello Frets Dems Derailed Gun Control with Filibuster*, NEWSBUSTERS, June 16, 2016, <http://www.newsbusters.org/blogs/nb/brad-wilmouth/2016/06/16/cnns-costello-frets-dems-derailed-gun-control-filibuster>.

88 Mike Allen, *June 17 Playbook*, POLITICO (June 17, 2016), <http://www.politico.com/tipsheets/playbook/2016/06/clintonites-join-dnc-sanders-loses-leverage-trump-touts-campaign-of-substance-bush-43-unlikely-savior-bday-desiree-barnes-tory-burch-newt-gingrich-matt-miller-214873>.

89 QRS NEWMEDIA, INC., <http://www.qrsnews.com/> (last visited Sept. 7, 2016).

90 Alex Richardson, *This Comment Was Sponsored By ...*, SLATE (June 20, 2016), http://www.slate.com/articles/technology/future_tense/2016/06/the_fec_can_t_figure_out_what_to_do_about_paid_speech_online.html.

Breakers program is in personnel and infrastructure. Everyone who is paid for this project is a full-time employee of Correct The Record and is identified as being associated with CTR when engaging with users online.”⁹¹ The article’s author noted Shappell “declined to answer any subsequent questions.”⁹²

53. On June 21, 2016, the *Washington Post* posted a Correct the Record video titled “Trump lies about his gun carry stance” to the “Campaign Ads 2016” section of its website.⁹³
54. On June 22, 2016, the *New York Times* reported on the Clinton campaign’s strategy “to pummel Donald J. Trump’s economic proposals” and portray him “as an uncaring and unscrupulous businessman,” and quoted Correct the Record staff about the campaign’s strategy:

“‘To disqualify him, you have to deconstruct that story’ that he is a successful businessman, said David Brock, who runs Correct the Record, a ‘super PAC’ that coordinates with the campaign to defend Mrs. Clinton. ‘Then, I think the credential that he has gets destroyed in the process.’”⁹⁴

55. On June 22, 2016, *Politico* reported that “A constellation of groups in the presumptive Democratic nominee’s political orbit is prepping a wide-ranging response” to a Trump speech critiquing Clinton “that will include a series of memos, rapid response releases, and calculated silences designed to paint the Republican as both corrupt and a peddler of

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Correct the Record: 'Trump Lies About His Gun Carry Stance'*, WASH. POST, June 21, 2016, https://www.washingtonpost.com/video/national/correct-the-record-trump-lies-about-his-gun-carry-stance-campaign-2016/2016/06/21/20daf058-379c-11e6-af02-1df55f0c77ff_video.html.

⁹⁴ Amy Chozick & Matt Flegenheimer, *Hillary Clinton to Pummel Donald Trump on Economy, Calling Him Uncaring*, N.Y. TIMES, June 22, 2016, <http://www.nytimes.com/2016/06/21/us/politics/hillary-clinton-economy-speech.html>.

conspiracy theories.”⁹⁵ According to the article, Correct the Record had distributed a three-and-a-half page memo to reporters and planned to conduct “real time fact-checking” during Trump’s speech:

Rapid response group Correct The Record will take the lead on the political side while Priorities USA Action, the big-money pro-Clinton super PAC that’s swamping swing states with anti-Trump television ads, is not expected to launch any specific response.

“Donald Trump’s campaign is melting down,” writes Correct the Record founder David Brock in a three-and-a-half page memo seen by POLITICO that the group is set to distribute widely on Wednesday morning

. . . Brock’s Correct The Record missive, which will be joined by the group’s real-time fact-checking during Trump’s speech, is itself an extensive prebutter.

“Here is what we know about this morning: Trump will be depending on widely-discredited sources like right-wing books Clinton Cash, which was panned by many for a lack of evidence and many errors, and Crisis of Character, which has been denounced by Secret Service veterans because the author was too low-ranking to have seen any of what he claims. Trump will also lie about Hillary Clinton today as he has lied about her before. There have been at least a dozen fact checks calling out Trump for lying about Clinton — on the issues, on the polls and on Benghazi. You name it; he’s lied about it,” Brock writes, calling the real estate developer a “practiced conspiracy theorist.”⁹⁶

56. On that same day, *The Hill* reported that “The pro-Clinton group Correct the Record peppered reporters’ inboxes with emails at the rate of about one every four minutes during the time Trump was speaking.”⁹⁷ *USA Today* also cited Correct the Record’s memo in an article on Trump’s speech.⁹⁸

⁹⁵ Gabriel Debenedetti, *Clinton allies circle the wagons against Trump speech*, POLITICO (Jun. 22, 2016), <http://www.politico.com/story/2016/06/hillary-clinton-allies-trump-224641#ixzz4CLHnAZrS>.

⁹⁶ *Id.*

⁹⁷ Niall Stanage, *Trump Moves Into Presidential Mode*, THE HILL (Jun. 22, 2016), <http://thehill.com/blogs/ballot-box/presidential-races/284470-trump-moves-into-presidential-mode>.

⁹⁸ David Jackson, *Amid Campaign Troubles, Trump Blasts Clinton as 'World-Class Liar'*, USA TODAY, Jun. 22, 2016,

57. On June 28, 2016, following the release of the Benghazi Select Committee report, Correct the Record President Brad Woodhouse authored an op-ed published in *The Hill* stating:

At Correct The Record, we've spent more than a year closely monitoring the Committee's activities. When it became clear last year that Republicans would try to manipulate this tragedy to hurt Hillary Clinton's 2016 presidential campaign, we mobilized to defend her. We launched the **Benghazi Research Center**; published **The Complete Guide to the Benghazi Select Committee**; and responded in real time to the Committee's 11-hour hearing with Secretary Clinton, fact-checking Chairman Gowdy and his colleagues.

This week, we published *Committee No. 10: The True Story of the House Select Committee on Benghazi*, a new book examining how Gowdy and his House Republican goons turned the Benghazi Committee into a taxpayer-funded cesspool of blind ambition, bald-faced lies and blatant government waste.⁹⁹

58. On July 11, Correct the Record's "Benghazi Research Project" announced through a press release on its website that it had published the 167-page book *Committee No. 10: The True Story of the House Select Committee on Benghazi*, noting:

Committee No. 10 is the latest effort by Correct The Record to expose the truth about the Benghazi Committee's partisan conduct. Ahead of Secretary Clinton's testimony before the Committee last October, Correct The Record's Benghazi Research Center published *The Complete Guide to the Benghazi Select Committee*, a comprehensive look at the Committee's shameful abuse of power.

During the testimony, Correct The Record responded in real time to Republicans' attacks and false claims, releasing more than 46 research-fueled press releases, fact-checks, reports, videos and other multimedia that debunked Republicans' false claims. With the Committee's final report anticipated soon, Correct The Record remains committed to exposing Republicans' partisan attacks on Secretary

http://www.usatoday.com/story/news/politics/elections/2016/06/22/donald-trump-hillary-clinton-corey-lewandowski/86190858/?utm_source=feedblitz&utm_medium=FeedBlitzRss&utm_campaign=usatoday-newstopstories.

⁹⁹ Brad Woodhouse, *The True Story of the Benghazi Committee*, THE HILL (June 28, 2016), <http://thehill.com/blogs/pundits-blog/lawmaker-news/285204-the-true-story-of-the-benghazi-committee> (emphasis in original).

Clinton and highlighting the Benghazi Committee's utterly shameful, partisan record.¹⁰⁰

59. On July 15, 2016, Correct the Record filed its Quarterly Report with the Commission for the period April 1 through June 30, reflecting \$1,300,058 in receipts for its non-contribution account, including \$150,000 from the corporation Fair Share Action, and \$1,484,807 in disbursements from its non-contribution account over the reporting period.¹⁰¹ The report reflects approximately \$71,799 in disbursements and obligations for "video production;" a \$48,333 debt to QRS Media for "booking consulting;" plus disbursements and obligations to Granholm Mulhern Associates, including \$15,000 paid for "communications consulting," \$10,587 for travel expenses, and an additional \$15,000 in debts owed for "communications consulting."¹⁰²
60. On July 21, 2016, *Politico* reported that, during the Republican National Convention, Correct the Record "mysteriously obtained and leaked drafts of Donald Trump's nomination speech — and those of several other convention speakers — hours before the night's proceedings were set to kick off, sending the Trump campaign scrambling on the final night of what has been a chaotic convention."¹⁰³

Correct the Record sent the text of Trump's draft speech to its press list a little after 6 p.m., gloating "as if this convention hasn't been enough of a failure for Trump, somehow he let US get a hold of his full remarks before the speech."

¹⁰⁰ Press Release, Benghazi Research Center, Correct the Record Publishes New Book on the Benghazi Committee's Witch Hunt Against Hillary Clinton (July 11, 2016), <http://benghazicommittee.com/correct-the-record-publishes-new-book-on-the-benghazi-committees-witch-hunt-against-hillary-clinton>.

¹⁰¹ Correct the Record July 15 Quarterly Report, FEC Form 3X (filed June 15, 2016), <http://docquery.fec.gov/pdf/318/201607159020655318/201607159020655318.pdf>.

¹⁰² *Id.* Recipients of disbursements for "video production" or "video consulting" include Wild Onion, Dewey Square Group, Allenswood Group, and Sandra Eisen.

¹⁰³ Kenneth Vogel & Julia Ioffe, 'Republican Source' Leaks Trump Speech to Dems, *POLITICO* (July 21, 2016), <http://www.politico.com/story/2016/07/rnc-2016-donald-trump-speech-leak-hillary-clinton-pac-225981>.

....
[David Brock] wouldn't identify his group's source, but described the person it was from as a "legitimate Republican" who was "in the right place at the right time. In the course of the work we do, we develop relationships with Republicans and this one paid off."

While Brock founded other non-profit groups that work to place moles in conservative organizations, he said the source of the Trump leak was "not someone we planted to go in there and infiltrate."

But he said the groups in his non-profit network would continue working to sleuth out confidential information from the Trump campaign.

"We're going to maintain the sources we have and see what we can get. If I were them, I would be a little freaked," he said, saying the speech leak shows the campaign is "loose and disorganized."¹⁰⁴

61. On July 23, 2016, *USA Today* reported on Correct the Record:

The group's operations center, or "war room," is located on the sixth floor of a modern, glass-front high-rise office building in one of Washington's up-and-coming neighborhoods.

Virtually around the clock, the group's researchers, communications experts and digital gurus monitor live news feeds from the major television networks, cable channels and even local television markets. They search newspapers and keep watch on social media sites for any disparaging or misleading remarks about Clinton and her record.

Whenever they spot what they believe is a distortion or outright lie, they fight back — with point-by-point fact-checks quickly disseminated to the news media, with slick videos that often use the offenders' own words against them, and with a cascade of social media posts on sites like Twitter and Facebook.¹⁰⁵

62. On August 9, 2016, Correct the Record Senior Advisor Jennifer Granholm authored an op-ed published in the *Detroit Free Press* titled "Trump's Detroit Speech Was a Page From 'Tired' GOP Playbook" criticizing Trump's economic proposals and noting that

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Id.

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Michael Collins, *Super PAC Works to Stop Anti-Clinton Smears Almost Before They Start*, USA TODAY, July 23, 2016, <http://www.usatoday.com/story/news/politics/elections/2016/07/23/super-pac-works-stop-anti-clinton-smears-almost-before-they-start/87448088/>.

“Clinton has a blueprint to strengthen American manufacturing and will make the largest investment in job creation since World War II.”¹⁰⁶

63. On August 16, the Clinton campaign announced that Correct the Record Senior Advisor Granholm would be a co-chair of the “Clinton-Kaine Transition Project,” the campaign’s official transition team.¹⁰⁷
64. On August 23, 2016, *Politico* Playbook reported that Correct the Record is “launching ‘The Trump Project’ . . . a video testimonial series featuring women and men telling stories about those taken advantage of, offended by, or otherwise hurt by Donald Trump.”¹⁰⁸ Correct the Record launched a new website, <http://trumpproject.org>, featuring several professionally-produced videos featuring interviews with individuals criticizing Trump.
65. On September 6, 2016, *Politico* Playbook reported that Correct the Record announced that it “will be unveiling three new video testimonial videos in our Trump Project [today]

¹⁰⁶ Jennifer Granholm, *Trump’s Detroit Speech Was a Page From ‘Tired’ GOP Playbook*, DETROIT FREE PRESS, Aug. 9, 2016, <http://www.freep.com/story/opinion/contributors/2016/08/09/trump-road-kansas-financial-fate/88448390/>.

¹⁰⁷ Press Release, Hillary for America, Clinton-Kaine Transition Project Announces Senior Leadership Team (Aug. 16, 2016), <https://www.hillaryclinton.com/briefing/updates/2016/08/16/clinton-kaine-transition-project-announces-senior-leadership-team/>; Rebecca Shabad, *Hillary Clinton’s transition team announced by John Podesta*, CBS NEWS (Aug. 16, 2016), <http://www.cbsnews.com/news/hillary-clinton-campaign-chairman-announces-transition-team/>.

¹⁰⁸ Jake Sherman, *August 23 Playbook*, POLITICO (Aug. 23, 2016), <http://www.politico.com/tipsheets/playbook/2016/08/the-new-october-surprise-trump-appoint-special-prosecutor-for-clinton-exclusive-playbook-interview-david-petraeus-clinton-to-discuss-trumps-alt-right-campaign-in-reno-216010>.

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featuring three members of the Last Vegas Culinary Union, two of whom are employees of Trump International Hotel Las Vegas.”¹⁰⁹

66. The “News” section of Correct the Record’s website (<http://correctrecord.org/news>) shows that, on a daily basis, the organization is putting out lengthy research memos, professionally-produced videos, press releases, and other materials praising Clinton or attacking her opponents. Correct the Record staff also regularly appear in the media praising Clinton or attacking her opponents.
67. Correct the Record has created and produced dozens of videos supporting Clinton or attacking her opponents, which it has posted to YouTube.¹¹⁰ After the videos are posted to YouTube, Correct the Record embeds the videos into pages on its own website, CorrectRecord.org. Correct the Record additionally promotes the videos on their Facebook page.¹¹¹

SUMMARY OF THE LAW

I. CONTRIBUTION LIMITS AND RESTRICTIONS

68. Federal law limits to \$2,700 the amount of a contribution that a presidential candidate or her authorized campaign committee may accept from an individual donor. 52 U.S.C § 30116(a)(1). FECA also prohibits a corporation or labor union from making a contribution to a federal candidate. 52 U.S.C. § 30118(a).

¹⁰⁹ Jake Sherman, *September 6 Playbook*, POLITICO (Sept. 6, 2016), <http://www.politico.com/tipsheets/playbook/2016/09/clinton-breaks-her-silence-scoop-pentagon-to-play-hardball-on-ryan-plan-the-playbook-interview-bret-baier-patrick-oconnor-to-k-street-tim-millers-new-job-216153>.

¹¹⁰ See Correct the Record, YOUTUBE, https://www.youtube.com/channel/UCZvm1vYbnVZ2th-qah_fIAw/videos?view=0&sort=dd&shelf_id=0.

¹¹¹ See Correct the Record, FACEBOOK, <https://www.facebook.com/CorrectRecord/videos?fref=photo>.

69. Generally, contributions from a person to political committees other than candidate and party committees may not exceed, in the aggregate, \$5,000 per calendar year, 52 U.S.C. § 30116(a)(1)(C), and candidates cannot accept contributions from a non-multicandidate political committee in excess of \$2,700, § 30116(a)(1).
70. However, the Commission in Advisory Opinion 2010-11 (Commonsense Ten) interpreted and applied court decisions in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Citizens United v. FEC*, 558 U.S. 310 (2010), and opined that a committee that “intends to make only independent expenditures” and that “will not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization” is permitted to solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees. AO 2010-11 at 2-3. Conversely, a committee that accepts contributions in excess of the limits from individuals and other political committees, or any contributions from corporations or labor organizations, is prohibited from contributing to candidates.
71. In 2011, pursuant to the stipulated order and consent judgment in *Carey v. FEC*, Civ. No. 11-259-RMC (D.D.C. 2011), the Commission issued guidance for political committees to operate as “hybrid” committees that make both independent expenditures and campaign contributions from segregated accounts.¹¹² These *Carey* committees may establish one “non-contribution” bank account that accepts contributions in unlimited amounts from individuals, corporations, labor organizations and other political committees that may be used only for independent expenditures—not for in-kind contributions to candidates—

¹¹² FEC Statement on *Carey v. FEC*: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account, *supra* note 1.

and also establish a separate bank account subject to FECA's contribution limits and source prohibitions for making contributions to federal candidates.¹¹³

72. Candidates and political committees are prohibited from knowingly accepting any contribution or making any expenditure in violation of federal law and, further, any officer or employee of a political committee is prohibited from knowingly accepting any contribution made for the benefit or use of any candidate, or making any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *See* 11 C.F.R. § 110.9.

a. CONTRIBUTION, DEFINED

73. "Contribution" is defined as (1) "any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office," 52 U.S.C. 30101(8)(A)(i), and (2) "the payment . . . of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose," 52 U.S.C. 30101(8)(A)(ii).
74. The Commission by regulation has defined the statutory phrase "anything of value" to include "all in-kind contributions" including, unless specifically exempted, "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge." 11 C.F.R. § 100.52(d)(1). Examples of such goods and services include, but are not limited to, "personnel," "advertising services," "facilities," "equipment," and "supplies." *Id.* The provision of any goods or services without charge or at a price less than the usual and normal charge for such goods or services is an in-kind contribution. *Id.*

¹¹³ *Id.*; *see also* Stipulated Order and Consent Judgment, *Carey v. Fed. Election Comm'n*, Civ. No. 11-259-RMC (D. D.C. 2011).

i. ***"COORDINATED EXPENDITURES" ARE IN-KIND CONTRIBUTIONS***

75. FECA makes clear that any expenditure made in coordination with a candidate is a "contribution" to such candidate. FECA states: "[E]xpenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents shall be considered to be a contribution to such candidate." 52 U.S.C. 30116(a)(7)(B)(i)(emphasis added).
76. This statutory coordination provision is implemented by the nearly-identical regulation defining "coordination" to mean "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 C.F.R. § 109.20(a). Any expenditure that is "coordinated" within the meaning of this regulation, "but that is not made for a coordinated communication under 11 CFR 109.21" is treated as an in-kind contribution to the candidate with whom it was coordinated and must be reported as an expenditure made by that candidate. 11 C.F.R. § 109.20(b) (emphasis added).¹¹⁴
77. In addition to the broad "coordination" regulation at 11 C.F.R. § 109.20, which directly implements the FECA coordination provision, the Commission has also promulgated a regulation pertaining to a subset of coordinated expenditures—those made for certain "coordinated communications"—at 11 C.F.R. § 109.21. To be a "coordinated communication," a communication must (1) be paid for by a person other than a candidate, 11 C.F.R. § 109.21(a)(1); (2) satisfy one of the "content standards" set forth in

¹¹⁴ Similarly, the Commission regulation defining "independent expenditure" makes clear that an expenditure is not "independent" if it is "made in cooperation, consultation, or concert, with, or at the request or suggestion of," a candidate, authorized committee, or a political party committee. 11 C.F.R. § 100.16.

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11 C.F.R. § 109.21(c); and (3) satisfy one of the “conduct standards” set forth in 11

C.F.R. § 109.21(d).

78. The “content standards” set forth in 11 C.F.R. 109.21(c) all pertain to “public communication,”¹¹⁵ a term defined by the Commission to mean:

[B]y means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term general public political advertising shall not include communications over the Internet, except for communications placed for a fee on another person’s Web site.

11 C.F.R. § 100.26.

79. Consequently, the Commission’s “coordinated communication” regulation at 11 C.F.R. § 109.21 applies only to expenditures for communications disseminated via media encompassed by the definition of “public communication” at 11 C.F.R. § 100.26.
80. For all other types of expenditures, such as expenditures that do not constitute communications, the applicable coordination regulation is 11 C.F.R. § 109.20; any such expenditure will be treated as an in-kind contribution to a candidate if made “in cooperation, consultation or concert with, or at the request or suggestion of,” a candidate or their campaign committee.

ii. *“COMPENSATION FOR PERSONAL SERVICES” IS AN IN-KIND CONTRIBUTION*

81. FECA also makes clear that compensation paid to a person to render services to a campaign is an in-kind contribution. The statutory phrase “compensation for personal services...without charge for any purpose,” 52 U.S.C. 30101(8)(A)(ii), has been defined

¹¹⁵ Although the “content standard” at 11 C.F.R. § 109.21(c)(1) does not explicitly refer to “public communication,” it does refer to “electioneering communication,” which includes certain broadcast, cable, and satellite communication and overlaps with the definition of “public communication” at 11 C.F.R. § 100.26.

by the Commission to include "[t]he payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose." 11 C.F.R. § 100.54.¹¹⁶

82. The Commission has applied the "compensation for personal services" provision in a variety of contexts. In Advisory Opinion 2006-22 (Jenkins & Oilchrist), the Commission advised that a law firm that provides free legal services to a candidate to prepare an amicus brief in a ballot eligibility case would be making a contribution under § 100.54. *Id.* at 4-5; *see also* MUR 6127 (Obama for America, 2010), First General Counsel's Report at 21 (citing Advisory Opinion 2006-22). Similarly, the Commission has stated that if an employer paid its workers to help renovate a candidate's campaign headquarters, those payments would be considered contributions by the employer. Advisory Opinion 1982-04 (Apodaca) at 2-3. It also advised that if an employer paid its employees while they served on the council of a PAC, those payments would be treated as a contribution to the PAC. Advisory Opinion 2011-14 (Utah Bankers Association). Additionally, in MUR 5366, which resulted in a conciliation agreement, the Commission concluded that a law firm had made impermissible in-kind contributions to a presidential campaign by paying law firm staff to provide general assistance to the presidential campaign committee in planning fundraising events and collecting contributions. MUR

¹¹⁶ Certain legal and account services are exempted from this definition of "contribution," as are uncompensated volunteer services. Additionally, 11 C.F.R. § 100.94 exempts "Uncompensated Internet activity" from the definition of "contribution," yet in promulgating this regulation the Commission emphasized that the new exceptions only apply to uncompensated Internet activity; as discussed in more detail below, if a person is compensated, the exception does not apply and their activity can be construed as a contribution or expenditure. 71 Fed. Reg. 18603-05.

5366 (Tab Turner/Edwards for President); *see also* Fourth General Counsel's Report at 20-21.

83. For purposes of the statute and regulations governing in-kind contributions to a campaign in the form of compensation for personal services, such compensated services are "rendered to" a campaign if the services were undertaken "in cooperation, consultation or concert with, or at the request or suggestion of" a candidate's campaign committee. For example, the Commission has indicated that an investigation by the Commission is warranted where facts suggest that the compensated services were provided "on behalf of" the campaign or when presented with "other indicia of concerted activity." MUR 6021 (DNC & Kerry for President 2004), First General Counsel's Report at 10.¹¹⁷

II. REPORTING / DISCLOSURE REQUIREMENTS

84. FECA requires each treasurer of a political committee to file reports of receipts and disbursements with the Commission. 52 U.S.C. § 30104(a)(1).
85. For any political committee other than a candidate-authorized committee, such reports must include the total amount of contributions made to other political committees, 52 U.S.C. § 30104(b)(4)(H)(i), as well as the name and address of each political committee

¹¹⁷ In MUR 6021, complainant Ralph Nader alleged that certain law firms had made in-kind contributions to 2004 Democratic presidential candidate John Kerry's campaign committee by paying its employees to engage in litigation challenging Nader's ballot eligibility. Neither Kerry nor the Kerry Committee were named parties to the litigation in question or otherwise publicly involved with the litigation. The Commission ultimately dismissed the complaint because (1) Nader had not provided evidence that the law firm had paid its attorneys for their work, as opposed to the attorneys volunteering their time without compensation, which is excepted under 11 CFR §§ 100.74 and 100.111, and (2) assuming the attorneys were paid, did not provide supporting facts suggesting the efforts were "on behalf of the Kerry Committee or other indicia of concerted activity." First General Counsel's Report at 10. The Commission found it dispositive that officials with the group organizing the ballot litigation provided affidavits declaring they did not undertake any activities "at the direction, request, suggestion of, or in conjunction or concert with" the Kerry Committee—in other words, that they did not coordinate with the campaign. *Id.*

that has received a contribution from the reporting committee during the reporting period, together with the date and amount of such contribution, 52 U.S.C. § 30104(b)(6)(B)(i).

86. For a candidate-authorized committee, such reports must include the total amount of all contributions received from other political committees, 52 U.S.C. § 30104(b)(2)(D), as well as the identification of each political committee that makes a contribution to the reporting candidate-authorized committee during the reporting period, together with the date and amount of such contribution, 52 U.S.C. § 30104(b)(3)(B).

CAUSES OF ACTION

COUNT I:

CORRECT THE RECORD HAS ILLEGALLY MADE IN-KIND CONTRIBUTIONS TO HILLARY FOR AMERICA FROM ITS "NON-CONTRIBUTION" ACCOUNT IN THE FORM OF COORDINATED EXPENDITURES

87. An "expenditure" includes "any purchase, payment...or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. 30101(9)(A).
88. Any expenditure made in coordination with a candidate—i.e., "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents"—is an in-kind contribution to the candidate. 52 U.S.C. 30116(a)(7)(B)(i), 11 C.F.R. § 109.20.
89. By its own repeated public statements, Correct the Record has acknowledged that its activities are "coordinated" with the Clinton campaign, Hillary for America, rendering any expenditures to pay for such activities in-kind contributions under 52 U.S.C. 30116(a)(7)(B)(i) and 11 C.F.R. § 109.20.
90. Publicly-reported examples of Correct the Record's expenditures that constitute in-kind contributions if made in "cooperation, consultation, or concert, with, or at the request or

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suggestion of" Clinton and/or her campaign committee staff, include, but are not limited to:

- i. Hundreds of thousands of dollars in expenditures to conduct "talking-point tutorials and media-training classes" for Clinton surrogates;
- ii. Expenditures to contract with an expert "who specializes in coaching people for television interviews" to lead the on-camera media training;
- iii. Expenditures to pay so-called "trackers" hired and deployed "to discreetly record the public events of her two main rival Democrats" in states across the country;
- iv. Expenditures to pay staff to conduct what Correct the Record's president calls "opposition research" and circulating research memos to reporters portraying Clinton's chief opponent as "extreme;"
- v. Expenditures to pay staff to produce and circulate memos to reporters "detailing Republicans' stance on prescription drugs" on the same day Clinton announced her health care policy;
- vi. Expenditures for professional media production, travel expenses, and personnel time to conduct "hundreds of interviews" to portray Clinton in a positive light for the "Let's Talk Hillary" project, pitching the video interviews to reporters, and launching a new website to promote the project;
- vii. Expenditures for staffing a "30-person war room" to defend Clinton during hearings before the House Select Committee on Benghazi, blasting reporters with "46 research-fueled press releases, fact-checks, reports, videos and other multimedia releases during the hearing," and distributing a 140-page "opposition research book to a variety of media outlets "that impugns the character of

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Republicans on the committee”—which later won Correct the Record a gold “Pollie” award from the American Association of Political Consultants for “Most Original/Innovative Collateral Material,” since “the book and rapid-response efforts received extensive earned media coverage [including 30 mentions on TV]” and successfully “shift[ed] the narrative . . . about the politically-fueled investigation;”

- viii. Expenditures for commissioning a private polling firm to conduct polls that showed Clinton winning the Democratic debate;
- ix. Expenditures to pay staff to contact reporters “by email and phone to offer ‘off the record’ story pitches;”
- x. Expenditures to pay staff to produce and circulate “a campaign ad” and other materials to state reporters ahead of Democratic nominating contests in those states;
- xi. \$1 million in expenditures to “tripl[e] . . . its digital operation to engage in online messaging . . . for Secretary Clinton;”
- xii. Expenditures to produce “a 40-minute video” highlighting Trump’s “struggles with the truth,” which was announced via a conference call with reporters;
- xiii. Expenditures to produce “a weekly roundup highlighting Trump’s new lies, the false claims he has repeated, and the latest reports from *The Washington Post* and *Politifact* debunking his statements;”
- xiv. Expenditures to pay a consulting firm “to help oversee an aggressive surrogate booking program, connecting regional and national surrogates with radio and television news outlets across the country in support of Hillary Clinton;”

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- xv. Expenditures to produce and distribute “an extensive prebutter” memo to reporters in advance of a Trump speech and then “pepper[ing] reporters’ inboxes with emails at the rate of about one every four minutes during the time Trump was speaking;”
 - xvi. Expenditures to pay staff to “develop relationships with Republicans” and “sleuth out confidential information from the Trump campaign,” and to distribute that information to reporters;
 - xvii. Expenditures for professional media production, travel expenses, and personnel time to create “a video testimonial series featuring women and men telling stories about those taken advantage of, offended by, or otherwise hurt by Donald Trump,” and to create a new website to house those videos.

See infra at ¶¶ 7-67.

- 91. The factual record demonstrates that the vast majority of Correct the Record’s expenditures have been for activities like opposition research, message development, surrogate training, reporter pitches, media booking, video production, “rapid response” press outreach, and other “earned media.” Any such expenditures made in “cooperation, consultation, or concert, with, or at the request or suggestion of” Clinton’s campaign committee constitute in-kind contributions to the campaign. 52 U.S.C. 30116(a)(7)(B)(i); 11 C.F.R. § 109.20.
- 92. Correct the Record is reported as publicly acknowledging that it has coordinated this activity with the Clinton campaign, but claiming it is exempt from the statutes and regulations governing coordination because these activities do not meet the definition of

“coordinated communications” at 11 C.F.R. § 109.21.¹¹⁸ However, a coordinated expenditure need not meet the definition of “coordinated communication” to constitute an in-kind contribution to a campaign. “Coordinated communications” are a subset of the much broader universe of “coordinated expenditures,” as defined at 52 U.S.C. 30116(a)(7)(B)(i) and 11 C.F.R. § 109.20.

93. Although the Commission in 2006 promulgated Internet regulations that, among other things, (1) exempted “uncompensated internet activity” from the definitions of “contribution”¹¹⁹ and “expenditure,”¹²⁰ and (2) excluded certain “communications over the Internet” from the definition of “public communications”¹²¹ (and, consequently, from the definition of “coordinated communications”¹²²), those rules have no bearing here: a case which involves compensated political committee staffers and contractors, and a wide range of coordinated in-kind contributions other than coordinated communications that did not take place on the Internet at all.¹²³ Indeed, the American Association of Political

¹¹⁸ See, e.g., Gold, *supra* note **Error! Bookmark not defined.** (“‘The FEC rules specifically permit some activity—in particular, activity on an organization’s website, in email, and on social media—to be legally coordinated with candidates and political parties,’ Adrienne Watson, a spokeswoman for Correct The Record, said in a statement.”); see also Gold, *supra* note 19 (“Correct the Record has more than 20 staff members and plans to disseminate much of its research on its website and through social media. Any nonpublic information of value that it shares with the Clinton staff will be purchased, according to a campaign official.”); see also Scherer, *supra* note **Error! Bookmark not defined.** (“But since [Correct the Record] does not pay for advertising advocating [Clinton’s] election, [Brock] says he can continue under current rules to talk to her, and her campaign staff about strategy, while deploying the unregulated money he raises to advocating her election online, through the press, or through other means of non-paid communications.”).

¹¹⁹ 11 CFR § 100.94.

¹²⁰ *Id.* § 100.155.

¹²¹ *Id.* § 100.26.

¹²² *Id.* § 109.21.

¹²³ What’s more, the 2006 rules were promulgated to implement the U.S. District Court decision in *Shays v. Federal Election Commission*, which stressed the importance of regulating coordinated expenditures in holding that the Commission’s previous definition of “public

Consultants "Pollie" award granted to Correct the Record was not even in the "Internet/Digital" category.

94. Additionally, in promulgating the 2006 Internet regulations, the Commission emphasized that a political committee's disbursements to develop "communications over the internet" can still meet the definition of "expenditure," even if the ultimate message isn't a "public communication" under 11 C.F.R. § 100.26. *Explanation and Justification for Internet Communications*, 71 Fed.Reg. 18589 (April 12, 2006).¹²⁴ For example, the Commission noted that, "if a political committee pays a blogger to write a message and post it within his or her blog entry," then that payment would be an "expenditure," and "[t]he expenditure by the political committee is akin to a vendor payment, which the political committee must report to the Commission." *Id.* at 18604-605. In other words, even though the blog itself would fall under the "communications over the Internet" exception, the political committee's underlying payments to the blogger are still considered "expenditures"—which, if coordinated with a candidate, would constitute in-kind contributions under 11 C.F.R. § 109.20. Therefore, Correct the Record's disbursements

communication" impermissibly excluded all internet activity. 337 F. Supp. 2d 28 (D.D.C. 2004) ("Shays District"), *aff'd*, 414 F.3d 76 (D.C. Cir. 2005) ("Shays Appeal"), *reh'g en banc denied* (Oct. 21, 2005). The court stressed that **"the whole rationale behind the distinction made for coordinated expenditures is that if a candidate or political party coordinates an expenditure with an outside person or entity, that expenditure is presumed to be aimed at assisting that candidate or political party. To allow such expenditures to be made unregulated would permit rampant circumvention of the campaign finance laws and foster corruption or the appearance of corruption."** *Id.* at 70 (emphasis added). Accordingly, Commission rules implementing the *Shays* decision cannot be read to undermine or weaken regulations for coordinated expenditures.

¹²⁴ The Explanation and Justification is available at http://www.fec.gov/law/cfr/ej_compilation/2006/notice_2006-8.pdf. The Commission explained that "[t]hese final rules are intended to ensure that political committees properly finance and disclose their Internet communications, without impeding individual citizens from using the Internet to speak freely regarding candidates and elections." *Id.*

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for salaries and compensation for its staff and contractors to conduct research, develop messaging materials, "track" opposition candidates, "engage in online messaging . . . for Secretary Clinton" and conduct "hundreds of interviews" for the "Let's Talk Hillary" project and "Trump Project" are still "expenditures," even if the finished product—such as a research memo, messaging guide, or video—falls under the "communications over the Internet" exception.¹²⁵ Accordingly, even if a small fraction of Correct the Record's expenditures went towards activities that fell under the "communications over the internet" exception to the definition of public communications (and the definition of coordinated communications), the underlying expenditures for staff compensation and equipment are still "expenditures" within the definition of 52 U.S.C. 30101(9)(A), and would constitute in-kind contributions under 11 C.F.R. § 109.20 if coordinated with a candidate.

95. Similarly, in promulgating the 2006 rules the Commission noted that "a political committee's purchase of computers for individuals to engage in Internet activities for the purpose of influencing a Federal election, remains an 'expenditure' by the political committee," even if the Internet activities conducted on that computer fell under an exception to the definition of "expenditure." *Id.* at 18606. Therefore, Correct the Record's disbursements for computer equipment and office space, software and web hosting for its multiple websites, video equipment and production for its campaign ads, commissioning private firms to conduct polls and media trainings, travel for opposition

¹²⁵ Indeed, the Commission emphasized that "these final rules exempt only those Internet services for which an individual does not receive any compensation. Campaign employees, for example, are not eligible for the exceptions in 11 CFR 100.94 and 100.155 for activities for which they are compensated." 71 Fed.Reg. 18604-605.

“trackers” and for staffers to conduct interviews for the “Let’s Talk Hillary” project, among other things, are still “expenditures,” even if the final product is posted on the Internet. If any of these expenditures were coordinated with the Clinton campaign, they would constitute in-kind contributions to the campaign. 52 U.S.C. 30116(a)(7)(B)(i), 11 C.F.R. § 109.20.

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96. As a so-called “*Carey*” or “hybrid” committee, Correct the Record is prohibited from using its “non-contribution” (i.e., “super PAC”) account to make contributions to candidates.
97. Based on published reports and Correct the Record’s statements, there is reason to believe that Correct the Record has made in-kind contributions to the Clinton campaign from its non-contribution account in the form of coordinated expenditures in violation of the committee’s sworn statements to the Commission that it would not make contributions to a candidate committee from its non-contribution account,¹²⁶ in excess of FECA’s \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), and in violation of FECA’s prohibition on contributions to a candidate using union and corporate funds, 52 U.S.C. § 30118(a), (b)(2).

COUNT II:

CORRECT THE RECORD HAS ILLEGALLY MADE IN-KIND CONTRIBUTIONS TO HILLARY FOR AMERICA FROM ITS “NON-CONTRIBUTION” ACCOUNT IN THE FORM OF COMPENSATION FOR THE PERSONAL SERVICES OF CORRECT THE RECORD STAFF RENDERED TO HILLARY FOR AMERICA

98. “Contribution” includes paying “compensation for the personal services of another person which are rendered to a political committee without charge for any purpose,” 52

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See supra note 2.

U.S.C. 30101(8)(A)(ii); *see also* 11 C.F.R. § 100.54. The value of such a contribution is calculated based on the salary or compensation paid to the person who provided the services. *See* Advisory Opinion 2006-22 (Jenkins & Oilchrist) First General Counsel's Report at 5; *see also* MUR 5366 (Tab Turner/Edwards for President) Fourth General Counsel's Report at 22. Such compensated services are "rendered to" a campaign if the services were undertaken at the request or suggestion of, or otherwise in coordination with, a candidate's campaign committee. MUR 6021 (DNC & Kerry for President 2004), First General Counsel's Report at 10.

99. Compensation paid by Correct the Record to its staff or contractors to conduct the services described in ¶ 94, *supra*, would constitute in-kind contributions to Hillary for America if the services were conducted at the request or suggestion of, or otherwise in coordination with, Clinton or her campaign committee staff.
100. Correct the Record has openly admitted that its activities are concerted and coordinated with the Clinton campaign, and effectively conducted on behalf of the campaign. Correct the Record founder David Brock, for example, has declared that Correct the Record discusses strategy with Clinton and her campaign staff,¹²⁷ and a Correct the Record spokesperson has similarly asserted that the group coordinates its activities with the Clinton campaign,¹²⁸ and a recent press release stated that Correct the Record's \$1 million "Barrier Breakers" project would engage in online messaging "for" Clinton.¹²⁹ Accordingly, compensation paid by Correct the Record to staff or contractors is a contribution to Hillary for America to the extent that the staff or contractors' services

¹²⁷ Scherer, *supra* note Error! Bookmark not defined..

¹²⁸ Gold, *supra* note Error! Bookmark not defined..

¹²⁹ Press Release, *supra* note Error! Bookmark not defined..

were conducted on behalf of or otherwise rendered to the Clinton campaign "for any purpose."¹³⁰

101. As a so-called "Carey" or "hybrid" committee, Correct the Record is prohibited from using its "non-contribution" (i.e., "super PAC") account to make contributions to candidates.
102. Based on published reports and Correct the Record's statements, there is reason to believe that Correct the Record has made in-kind contributions to the Clinton campaign from its non-contribution account in the form of compensation for the personal services of Correct the Record staff rendered to Hillary for America, in violation of the committee's sworn statements to the Commission that it would not make contributions to a candidate committee from its non-contribution account,¹³¹ in excess of FECA's \$2,700 limit on contributions by a non-multicandidate political committee to a candidate, 52 U.S.C. § 30116(a)(1), and in violation of FECA's prohibition on contributions to a candidate using union and corporate funds, 52 U.S.C. § 30118(a) and (b)(2).

COUNT III:

CORRECT THE RECORD HAS UNLAWFULLY ACCEPTED CORPORATE CONTRIBUTIONS, LABOR ORGANIZATION CONTRIBUTIONS AND CONTRIBUTIONS IN EXCESS OF \$5,000

103. When Correct the Record filed its statement of organization with the Commission, it represented that it would raise funds "in unlimited amounts from individuals,

¹³⁰ It is irrelevant whether the services rendered resulted in products posted on the internet. For example, the Commission has previously held that the compensation a law firm paid to its employees to prepare an amicus brief for a candidate would be an in-kind contribution to that candidate, Advisory Opinion 2006-22; compensation paid for those services would still be a contribution if the law firm posts a .pdf of the amicus brief on its website. Similarly, the Commission has held that an employer's payments to its workers to help renovate a candidate's campaign headquarters constitute a contribution to the candidate, Advisory Opinion 1982-04; this would still be the case if the employer posted a picture of the renovations on his firm's website.

¹³¹ See sources cited *supra* note 2.

corporations, labor organizations, and/or other political committees” but that those funds “will not be used to make contributions, whether direct, in-kind, or via coordinated communications, or coordinated expenditures, to federal candidates or committees.”

Correct the Record’s in-kind contributions to Hillary for America from its non-contribution account rendered its representations inaccurate and its reliance on AO 2010-11 and *Carey* inapplicable, and thus, Correct the Record is a political committee subject to FECA’s contribution limits and source prohibitions.

104. Accordingly, based on the published reports and analysis described above, and based on disclosure reports that Correct the Record has filed with the Commission, there is reason to believe that Correct the Record has violated the prohibition on a political committee’s receipt of corporate and labor organization contributions, 52 U.S.C. § 30118 (a), as well as the \$5,000 limit on contributions received by non-candidate, non-party committees. 52 U.S.C. § 30116 (a)(1)(C).

COUNT IV:

CORRECT THE RECORD HAS FAILED TO REPORT CONTRIBUTIONS TO HILLARY FOR AMERICA

105. Federal law requires political committees to report and disclose contributions, including in-kind contributions, made to candidates. *See* 52 U.S.C. § 30104(b).
106. Based on published reports, as well as disclosure reports that Correct the Record has filed with the Commission, there is reason to believe that Correct the Record has failed to report its in-kind contributions to Hillary for America, in violation of federal law reporting requirements.

COUNT V:

HILLARY FOR AMERICA HAS FAILED TO REPORT CONTRIBUTIONS FROM CORRECT THE RECORD

107. Federal law requires candidates to report and disclose contributions, including in-kind contributions, received from political committees. *See* 52 U.S.C. § 30104(b).
108. A coordinated expenditure is "an in-kind contribution to . . . the candidate . . . with whom or with which it was coordinated and must be reported as an expenditure made by that candidate." 11 C.F.R. § 109.20(b). "Contribution" also includes the payment of "compensation for the personal services of another person which are rendered to a political committee without charge for any purpose," 52 U.S.C. § 30101(8)(A)(ii); *see also* 11 C.F.R. § 100.54.
109. Based on published reports and public statements from Correct the Record officials, there is reason to believe Hillary for America received in-kind contributions from Correct the Record in the form of coordinated expenditures, compensation for personal services and other things of value, yet failed to report those contributions and corresponding in-kind expenditures, in violation of FECA's reporting requirements, 52 U.S.C. §§ 30104(b)(2)(D) and 30104(b)(3)(B).

**COUNT VI:
HILLARY FOR AMERICA HAS ACCEPTED IN-KIND CONTRIBUTIONS IN EXCESS OF FEDERAL
LIMITS**

110. Federal law limits to \$2,700 the size of a contribution that a presidential candidate or her authorized campaign committee can accept from a non-multicandidate political committee like Correct the Record. 52 U.S.C § 30116(a)(1).
111. Based on published reports and public statements from Correct the Record officials, there is reason to believe Hillary for America received multiple in-kind contributions from Correct the Record in excess of FECA's \$2,700 limit, 52 U.S.C. § 30116(a)(1).

PRAYER FOR RELIEF

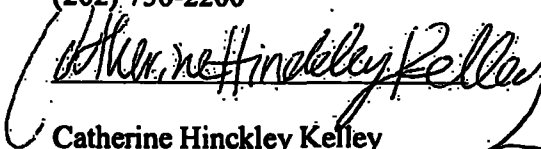
112. Wherefore, the Commission should find reason to believe that Correct the Record and Hillary for America have violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30116(a), 30118(a), and 30104, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

October 6, 2016

Respectfully submitted,



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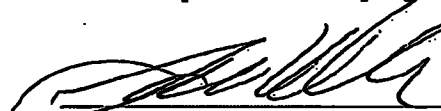
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VERIFICATION

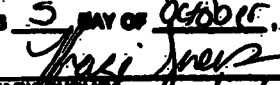
The complainants listed below hereby verify that the statements made in the attached
Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center


Lawrence M. Noble

Sworn to and subscribed before me this 5 day of October, 2016.

DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 5 DAY OF October, 2016

NOTARY PUBLIC
My Commission Expires 7/31/2016

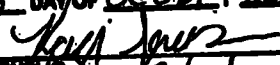

Notary Public

For Complainant Catherine Hinckley Kelley


Catherine Hinckley Kelley

Sworn to and subscribed before me this 6 day of October, 2016.


Notary Public

DISTRICT OF COLUMBIA: SS
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 6 DAY OF October, 2016

NOTARY PUBLIC
My Commission Expires 7/31/2016

